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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 LOS ANGELES CATHOLIC
15 WORKER, an unincorporated
16 association; CANGRESS, a non-profit
17 corporation; HARRY JAMES JONES,
18 LOUIS GRADY, LLOYD HINKLE,
19 WALTER SHOAF, individuals

20 Plaintiffs,

21 vs.

22 LOS ANGELES DOWNTOWN
23 INDUSTRIAL DISTRICT BUSINESS
24 IMPROVEMENT DISTRICT,
25 CENTRAL CITY EAST
26 ASSOCIATION, INC., CITY OF LOS
27 ANGELES; DOES 1-10

28 Defendants.

CASE NO.: CV14-07344 PSG (AJWx)

**DEFENDANT CITY OF LOS
ANGELES' NOTICE OF MOTION
AND MOTION TO DISMISS
[FRCP 12(b)(6)];
MEMORANDUM OF POINTS AND
AUTHORITIES**

**Filed Concurrently with [Proposed]
Order**

Date: January 12, 2015
Time: 1:30 p.m.
Courtroom: Roybal 880

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

1 PLEASE TAKE NOTICE that on January 12, 2015, at 1:30 p.m., or as soon
2 thereafter as counsel may be heard in Courtroom 880, located at 255 E. Temple
3 Street, Los Angeles, California 90012, Defendant City of Los Angeles will move
4 the Court to dismiss the entire action against Defendant City of Los Angeles
5 pursuant to Federal Rule 12(b)(6) for failure to state a claim upon which relief can
6 be granted. Plaintiffs' complaint is defective for the following reasons: (1) The
7 claims alleged against Defendant City of Los Angeles are vague and unclear; and
8 (2) Plaintiffs' claims against the City of Los Angeles are based upon incorrect legal
9 theories, and legal conclusions without sufficient factual support.

10 This motion is based upon this Notice of Motion and Motion, the
11 Memorandum of Points and Authorities filed herewith, and the pleadings and
12 papers filed herein.

13 This motion is made following a conference of counsel pursuant to Local
14 Rule 7-3 which took place on October 14, 2014.

15 DATED: November 21, 2014

16 **MICHAEL N. FEUER**, City Attorney
17 **THOMAS H. PETERS**, Chief Assistant City Attorney
18 **RONALD S. WHITAKER**, Managing Assistant City Attorney

19
20 By: 
21 **ELIZABETH T. FITZGERALD**
22 Deputy City Attorney, *Attorneys for Defendant*
23 **CITY OF LOS ANGELES**
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BACKGROUND

Summary of Argument

Defendant City of Los Angeles requests that the Court dismiss each of Plaintiffs' claims against the City pursuant to Federal Rule 12(b)(6). Plaintiffs' complaint is defective for the following reasons: (1) The claims alleged against the City are vague and unclear; and (2) Plaintiffs' claims against the City are based upon incorrect legal conclusions, and legal conclusions without sufficient factual support. Plaintiffs erroneously contend that the City of Los Angeles is legally responsible for alleged wrongful acts by private security officers who are not City employees. Plaintiffs also claim that the City is conspiring with the other defendants in this action to deprive Plaintiffs of their constitutional rights. Plaintiffs' purported agency theory is incorrect, and Plaintiffs conspiracy theory has no factual support. None of Plaintiffs' claims against the City of Los Angeles are plausible – they are both legally and factually insufficient. As such, the City should be dismissed from this litigation, forthwith.

The Plaintiffs

Plaintiffs in this case are four homeless individuals and two organizations. The four individual Plaintiffs are Harry James Jones, Louis Grady, Walter Shoaf, and Lloyd Hinkle. The two organizational Plaintiffs are "Los Angeles Catholic Worker" and "CANGRESS," also known as "The Los Angeles Community Action Network." L.A. Catholic Worker is "an unincorporated lay Catholic community of women and men providing services to homeless residents of Skid Row." (Complaint, p.5:11-13) CANGRESS is "a grassroots, non-profit organization," with members including "over 800 poor people in Skid Row." (Complaint, p.6:21-23). The "main purpose" of CANGRESS is "to organize and empower community residents to work collectively to address systemic poverty and oppression in their community" and to "protect the rights and prevent the further disenfranchisement

1 of homeless and poor people in Los Angeles.” (Complaint, p.6: 23-28).

2 **The Defendants**

3 Defendants are: (1) “The Los Angeles Downtown Industrial District
4 Business Improvement District,” a non-profit organization (“Business
5 Improvement District” or “LADID”); (2) “Central City East Association,”
6 (“CCEA”) a non-profit organization of property owners that administers the
7 Downtown Industrial District Business Improvement District; and (3) the City of
8 Los Angeles. As will be discussed below, the City of Los Angeles is the only
9 defendant which is a government entity. Both the Downtown Industrial Business
10 Improvement District and CCEA are private entities. Neither the Business
11 Improvement District, nor the CCEA are agents of the City of Los Angeles.

12 **Plaintiffs’ Claims**

13 Plaintiffs seek injunctive relief and damages against Defendants under 42
14 U.S.C. Section 1983 for violations of their Fourth, Fifth and Fourteenth
15 Amendments. (Complaint, p.2:1-5). Plaintiffs also allege the following state law
16 claims against Defendants: Violation of State Law Civil Rights under Cal. Civil
17 Code Section 52.1; Conversion; and Trespass to Personal Property. Plaintiffs seek
18 relief in the form of compensatory damages, injunctive relief and declaratory relief.

19 **II. THE ESTABLISHMENT OF “BUSINESS IMPROVEMENT** 20 **DISTRICTS” PURSUANT TO THE PROPERTY AND BUSINESS** 21 **IMPROVEMENT DISTRICT LAW OF 1994**

22 In 1994, the California legislature enacted the “Property and Business
23 Improvement District Law of 1994,” (California Street and Highways Code
24 Sections 36600 – 36671), with the goal of promoting revitalization in economically
25 disadvantaged business districts through *improvements* and *activities* funded by
26 special assessments. (Section 36601, *emphasis added*). “Improvements” are
27 defined by Section 36610 as “the acquisition, construction, installation, or
28 maintenance of any tangible property with an estimated useful life of five years or

1 more” and include parks, fountains, sidewalks, plazas, pedestrian malls, and
 2 planting areas, among other things. “Activities” under Section 36613(e) include
 3 “Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and
 4 other municipal services supplemental to those normally provided by the
 5 municipality.” The activities and improvements of a Business Improvement
 6 District are funded through a special assessment (Section 36606).

7 A city initiates proceedings to form a business improvement district “upon
 8 the submission of a written petition, signed by the property or business owners in
 9 the proposed district who will pay more than 50 percent of the assessments
 10 proposed to be levied...(Section 36621(a)). The petition must include a summary
 11 of a plan for the proposed operations of the business improvement district. (Section
 12 36621(b)). The plan must include a description of the boundaries of the district, a
 13 listing of each business and property that will be assessed, the improvements and
 14 activities to be funded, sources of financing, a schedule for implementation of the
 15 improvements and activities, and rules and regulations for the district. (Section
 16 36622).

17 If the City supports the proposal, it holds public hearings on the plan with
 18 notice to all property and business owners affected. (Sections 36623-36626). The
 19 affected property and business owners then vote on the plan. (Section 36623 and
 20 Govt. Code Section 53753).

21 Once a business improvement district is established, the district may be
 22 administered directly by the city, or by an “owners’ association” that is under
 23 contract with the City. (Section 36651).

24 California Street and Highways Code Section 36614.5 provides: “Owners’
 25 association” means a *private* nonprofit entity that is under contract with a city to
 26 administer or implement activities and improvements specified in the management
 27 district plan. (*emphasis added*). “An owners’ association is a *private entity* and
 28 *may not be considered a public entity for any purpose*, nor may its board

1 members or staff be considered to be public officials for any purpose.” (*emphasis*
 2 *added*). In the present case, the owners association that that administers the
 3 “Downtown Industrial Business Improvement District” is the “Central City East
 4 Association” (CCEA).

5 The statutory scheme establishing and governing the Downtown Industrial
 6 Business Improvement District, and the owners association, CCEA, provides in
 7 unequivocal terms that these entities are private, and distinct from the City of Los
 8 Angeles. They are not public entities nor are they agents of the City. Indeed,
 9 CCEA and the Downtown Industrial Business Improvement district have their own
 10 legal counsel, provided through a policy of insurance, and are not represented by
 11 the Los Angeles City Attorney’s Office. Plaintiffs’ attempt to characterize the
 12 Defendants as “joint actors” having “joint obligations” (Complaint. p.9:13-14) is
 13 misguided, and is contradicted by statute, and the factual realities of the
 14 arrangement between these entities. Because the claims of alleged wrongdoing, set
 15 forth in the complaint, only involve employees of the Downtown Industrial
 16 Business Improvement District, and CCEA, but not the City, all claims against the
 17 City should be dismissed.

18 **II. LEGAL STANDANDS PERTAINING TO FRCP 12(b)(6) MOTIONS**

19 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a
 20 “short and plain statement of the claim showing that the pleader is entitled to
 21 relief.” A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)
 22 challenges the sufficiency of allegations in the complaint. Under Rule 12(b)(6) a
 23 dismissal is proper where there is either a “lack of a cognizable legal theory” or
 24 “the absence of sufficient facts alleged under the cognizable legal theory.”
 25 *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). When
 26 considering a 12(b)(6) motion, “all allegations of material fact are accepted as true
 27 and should be construed in the light most favorable to the plaintiff.” *Resnick v.*
 28 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

To survive a Rule 12(b)(6) motion to dismiss, plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint must contain more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Twombly*, at 555. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Twombly* at 556.

Two working principles underlie the Supreme Court’s decision in *Twombly*. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to *legal conclusions*.” (emphasis added) *Iqbal* at 678. “Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal* at 679, quoting *Twombly* at 556. “While legal conclusions can provide the framework of a complaint, they must be supported by *factual allegations*.” (emphasis added) *Ashcroft* at 679.

As discussed below, Plaintiffs’ complaint is confusing and unclear, and contains incorrect legal conclusions as well as legal conclusions which lack factual support.

III. DISCUSSION

A. The Complaint is Confusing and Unclear

The complaint contains five confusing claims, consisting of both state and federal law, mixed together, and styled as follows:

(1) “FIRST CAUSE OF ACTION: Right to Be Secure from Unreasonable Seizures, 42 U.S.C. Section 1983 – Fourth Amendment; Art. 1 Section 13, California Constitution” against “All Defendants” (Complaint, p.26:24-28);

(2) “SECOND CAUSE OF ACTION: Right to Due Process of Law, 42 U.S.C. Section 1983, Fifth and Fourteenth Amendments; Art. I, section 7 Calif. Constitution against “All Defendants” (Complaint, p.28:6-10);

1 (3) “THIRD CAUSE OF ACTION: Violation of Civil Rights: Interference By
2 Threat, Intimidation or Coercion, California Civil Code Section 52.1” (Complaint,
3 p. 30:7-9);

4 (4) “FOURTH CAUSE OF ACTION: Conversion” (Complaint, p. 30:21-22);

5 (5) “FIFTH CAUSE OF ACTION: Trespass to Personal Property” (Complaint,
6 p. 31:12-13).

7 While the first two claims are alleged against “All Defendants,” it is unclear
8 whether the third, fourth and fifth claims (state claims) are alleged against the City or
9 CCEA or the Business Improvement District, or some combination of the three.
10 Beyond that, the complaint does not identify which Plaintiff or Plaintiffs bring each
11 of the five claims. Is CANGRESS alleging conversion? Against whom? Is L.A.
12 Catholic Worker alleging trespass to real property? A review of the lengthy 26 pages
13 worth of preliminary information in the complaint does not easily answer these
14 questions.

15 Adding to the confusion, the first page of the Complaint lists five claims,
16 which are *different* than the five listed above in the body of the complaint. Those
17 claims listed on the first page are: (1) 42 U.S.C. Section 1983 and Fourth, Fifth and
18 Fourteenth Amendments; (2) California Constitution Article I, Sections 7 and 13;
19 (3) California Civil Code Sections 52, 52.1; (4) Conversion; and (5) Trespass to
20 Personal Property. On the first page, all alleged violations of the California
21 Constitution are grouped together as a single claim. But in the body of the
22 complaint, the State Constitutional claims are split between the First and Second
23 claims. The title page of the Complaint groups together all of the Section 1983
24 claims (Fourth, Fifth and Fourteenth Amendment violations); however, in the body
25 of the complaint, alleged violations of the Fourth Amendment are part of the First
26 Claim, and violations of the Fifth and Fourteenth Amendment are part of the
27 Second Claim.

28 At pages 19 through 24 the complaint describes various incidents alleged by

1 individual plaintiffs Harry James Jones, Louis Grady, Walter Shoaf and Lloyd
2 Hinkle. Yet, nowhere is there a single allegation that any employee of the City of
3 Los Angeles took the property of any of these four plaintiffs in violation of the
4 Fourth Amendment. Nor are there any allegations that any City of Los Angeles
5 employee “converted” property belonging to any of these individual plaintiffs.

6 Additionally, the complaint does not identify whether individual Plaintiffs
7 Jones, Grady, Shoaf and Hinkle are members of CANGRESS. Nor does the
8 complaint identify whether the four individual Plaintiffs are clients of L.A.
9 Catholic Worker.

10 The prayer of the complaint does not provide any guidance either. For
11 example, paragraph “1” of the prayer (p.32:4-5) seeks injunctive relief against
12 “defendants” in the *plural*, restraining defendants from their “policies, practices,
13 and conduct”, but does not specify *which* defendants. However, paragraph “2” of
14 the prayer at p.32:6-8 seeks declaratory relief that “defendant’s policies, practices,
15 and conduct” are unconstitutional, referring to “defendant” in the *singular*.

16 The complaint is vague and conclusory, and only provides supporting factual
17 detail with respect to the hardships endured by plaintiffs Jones, Grady, Hinkle and
18 Shoaf. Indeed, none of the claims made by the individual plaintiffs involve the
19 City of Los Angeles or any of its employees – but rather, BID Officers who are
20 privately employed. The closest the complaint comes to providing any specific
21 factual detail about an employee of the City of Los Angeles interacting with a
22 Plaintiff at is p. 23:17-24:5. There, the complaint describes a dispute between
23 CANGRESS members and BID Officers who were seizing property they believed
24 to be abandoned. The complaint alleges that the property belonged to Plaintiff
25 Hinkle. LAPD officers intervened to keep the peace while BID Officers were
26 taking the property. This is the only specific factual allegation in the entire
27 complaint describing conduct by any employee of the City of Los Angeles. But,
28 these facts do not amount to “threats and intimidation” as alleged in the complaint.

1 These facts do not support any of the causes of action pled in the complaint. The
 2 conduct described in the complaint is not sufficient to state a plausible claim
 3 against the City of Los Angeles and for this reason, each claim against the City
 4 should be dismissed.

5 **B. Plaintiffs' claims against the City of Los Angeles are based upon**
 6 **incorrect legal conclusions, and legal conclusions without sufficient factual**
 7 **support**

8 The complaint fails to state claims against the City of Los Angeles which
 9 comply with Fed. Rule of Civ. Pro 8. The complaint states mere legal conclusions
 10 without factual support. It alleges legal relationships between co-defendants that
 11 do not exist. Some of legal conclusions in the complaint are not only lacking in
 12 factual support, but are incorrect statements of law.

13 Plaintiffs appear to be arguing that the City is liable for alleged actions of
 14 the Business Improvement District, and the CCEA. The complaint contains details
 15 of actions by private security guards employed by the Business Improvement
 16 District, referred to as "BID officers". (Complaint, p.12:11-17). Plaintiffs seem to
 17 suggest that these private employees are agents of the City and that the City is
 18 liable for their actions.

19 Various incorrect legal conclusions alleged throughout the complaint, and
 20 legal conclusions lacking factual support are listed and analyzed below:

21 (1) Plaintiffs contend that the LADID and the CCEA act as *agents* of the
 22 City (Complaint, p.8:26-27). Plaintiffs erroneously claim that LADID was created
 23 by the City and that the CCEA is an agent of the City. (Complaint, p. 24:21-24).
 24 This is incorrect. Property owners, not the City, created LADID, pursuant to the
 25 statutes governing Business Improvement Districts. The "Property and Business
 26 Improvement District Law of 1994 specifically provides that Business
 27 Improvement Districts and owners associations are private entities and may not be
 28 considered a public entity for any purpose. LADID and CCEA are not agents of

1 the City – as evidenced by the fact that they have their own counsel provided
2 pursuant to a policy of insurance.

3 (2) Plaintiffs contend that defendants *conspired* together to deprive plaintiffs
4 of their constitutional rights. (Complaint, p.8:26-28; p.25:1-7). Plaintiffs' claims
5 of conspiracy between the City and the other defendants are nothing more than
6 conclusory allegations. A bare assertion of "conspiracy" is not sufficient to state a
7 plausible claim of conspiracy, nor are conclusory allegations of "an agreement" at
8 some unidentified point in time. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
9 556-557. Indeed, the complaint provides no more than: "On *information and*
10 *belief*, the CITY and its officers and/or agents urged the BID to remove homeless
11 individuals' property on Skid Row." (Complaint at 25: 3-5). "Information and
12 belief" is not a specific factual allegation.

13 (3) Plaintiffs contend that defendants are violating the injunction in the case
14 of *Lavan v. City of Los Angeles*, CV 11-2874 PSG (AJWx) (Complaint, p.5:1-4).
15 First, of the three defendants in this case, only the City of Los Angeles is a party to
16 the *Lavan* injunction. Moreover, Plaintiffs' complaint provides no factual support
17 whatsoever for Plaintiffs' claim that defendants are conspiring to violate the *Lavan*
18 injunction.

19 (4) Plaintiffs contend that defendants are "joint actors" with "joint
20 obligations" and each defendant is responsible for the conduct and injuries alleged
21 in the complaint. (Complaint, p.9:14-15). Plaintiffs' allegation that the City of Los
22 Angeles is a "joint actor" with the other two defendants is not supported by law or
23 by any of the facts. Are Plaintiffs contending that Defendants are "joint
24 tortfeasors" or "co-conspirators" or "principal and agent"? Plaintiffs use of the
25 terms "joint actors" and "joint obligations" does not add any clarity to the
26 complaint, and infuses confusing and unsubstantiated legal theories into the
27 Complaint.
28

1 **IV. CONCLUSION**

2 The City is not a proper party in this case. Neither the LADID nor the CCEA
3 are agents of the City. Nor are they public entities. BID Officers are not employees
4 of the City. The Complaint contains no facts to support any of the five causes of
5 action pled against the City of Los Angeles. Accordingly, the entire action against
6 the City of Los Angeles should be dismissed.

7 DATED: November 21, 2014

8 **MICHAEL N. FEUER**, City Attorney

9 **THOMAS H. PETERS**, Chief Assistant City Attorney

10 **RONALD S. WHITAKER**, Managing Assistant City Attorney

11
12 By: 
13 **ELIZABETH T. FITZGERALD**
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